

THE GANGMASTERS (APPEALS) REGULATIONS 2006

In the matter of an appeal against a decision made by the
Gangmasters Licensing Authority (Ref 28/E/R)

Atlas Recruitment Agency

(The Appellant)

V

The Gangmasters Licensing Authority

(The Respondent)

Appointed Person

Ms Gill Sage

Written Determination

Decision and Summary Statement of Reasons of the Appointed Person in relation to the above matter:

Decision

Upon consideration of the appeal documents and accompanying letter presented by the Appellant on the 20 August 2009 and the response to the appeal lodged by the Respondent dated the 17 September 2009; it is the decision of the Appointed Person that the appeal of the Appellant be struck out.

Summary Statement of Reasons

1. This is an appeal against the decision of the Respondent dated the 22 July 2009 that reached the conclusion that the Principal Authority Mr Akram and Mr Omer who was present at the Application Investigation were not fit and proper persons to hold a license. Their application for a license was therefore refused.
2. As a result of the expedited procedure set out in Regulation 20 Gangmasters (Appeals) Regulations 2006 ("the Appeals Regulations") applies, directions have been given to me and the parties have agreed that the appeal will be dealt with without an oral hearing pursuant to Regulation 15 of the Appeals Regulations. The parties have supplied all the documents they wish to rely upon and these have been considered by me in accordance with Regulations 15(3) of the Appeals Regulations.

The Law

3. The Gangmasters (Licensing) Act 2004 aims to curb exploitation of labour in agriculture and other particular industries. The GLA has established standards to assess compliance. The GLA assesses on inspections to consider compliance or non compliance.
4. For the purposes of assessing non compliance, a scoring system is used which categorises infringements according to their level of seriousness. The fail score of non-compliance is 30. If a licence holder is found to be in breach, additional License conditions can be added to the licence to sets down specific improvements and to set down timescales for that improvement to be made. Failure to comply with any additional License conditions may result in the License being revoked.
5. Regulation 12(1) of the Gangmasters (Licensing Authority) Regulations 2005 states that "the authority shall have regard to the principle that a person should be authorised to act as it Gangmaster only if and in so far as his conduct complies with the requirements of paragraph (2), namely "compliance with any obligations imposed by or under any enactments insofar as they relate to or affect the conduct of, the licence holder or a specified person as persons authorised to undertake certain activities".

The Background

6. It was noted that previous applications had been submitted by a Company named Suffolk Recruitment trading as Bestway Recruitment. This Company named the Principal Authority Mr Manssori and gave his personal address as

336 Hawthorn Drive Ipswich. A license was refused on the 13 February 2008 due to non-compliance with Licensing Standards. It was found that Mr Omer was the person who appeared to be running the business as he could answer the questions relating to the business activities whereas the Principal Authority could not. In another application made by a Company called Suffolk Recruitment Limited trading as Bestway Recruitment, which again had Mr Manssori as the Principal Authority with the same address, an application for a license was again refused on the 18 August 2008 due to a failure to comply with license standards as again he was unable to answer the basic questions during the investigation.

7. The Appellant applied for a license on the 12 May 2009 by telephone. Mr Akram, the Principal Authority, posted the forms to the Respondent on the 22 May 2009. Payment was received by the Respondent on the 2 June 2009. An Application Inspection was undertaken by two inspectors Helen Miller and Claire Johnson on the 8 July 2009.
8. Other Government Department checks were carried out in the case of the Appellant Company. In that investigation it was discovered that Mr Osman had previously been appointed as a Director of the Company and the Principal Authority but he was replaced by Mr Akram.
9. Prior to the investigation, the inspectors visited Capel Mushrooms who was said to be the intended labour user. One worker, who could not speak English, was unable to say how he had got the job. He stated that he had been shown a contract but the signature was not his and that the contract had been completed by Mr Omer.
10. The inspection took place at the Appellant's place of business on the 8 July 2009 but the inspection was terminated by the inspectors as they did not believe that it was Mr Akram who was running the business.
11. Following the inspection, Mr Skamballis submitted a form to appoint Mr Omer as a Director to the Appellant Company. On the 17 July 2009 Mr Skamballis sent to the Respondent all the forms confirming that Mr Akram had resigned from the Appellant Company and Mr Omer had been appointed Director and Principal Authority and sent to the Respondent a change of Principal Authority form.
12. The appeal was submitted by the Appellants on the basis that the Licensing Authority has failed to consider the application again with Mr Omer as the Principal Authority and continued to refer to Mr Akram as Principal Authority.

Finding in relation to the alleged breaches of the Licensing Standards

The findings of fact in relation to the breaches of the Licensing Standards I find to be as follows:

1. Licensed standard 1.1

“A license holder, Principal Authority and any person named or otherwise specified in the license must at all times act in a fit and proper manner”

1.1 There were three person present at the inspection Mr Akram (the Principal Authority), Mr Omer and Mr Skamballis the accountant. In the inspection the inspectors asked Mr Akram questions but he appeared to be unable to explain why he applied for a license and how he funded it. He was also unable to explain who Mr Osman was (even though he was known to be a previous Director of the Company). Mr Akram could not tell the inspector what his role would be in the Company and at that point the inspectors stopped the inspection. It was put to Mr Omer by the inspectors that it was his business and they had been informed of this by another source, he replied that this was a lie.

1.2 Mr Skamballis told the inspectors that he had suggested putting Mr Akram's name forward as the Principal Authority rather than Mr Omer and the intention was to add Mr Omer as Director later, once the license had been granted. Mr Omer was asked why he had not applied himself and he said it was because he had no money he was bankrupt and had no bank account. He said that Mr Akram paid the licence fee; however the inspectors had already established that Mr Akram had been unable to pay for it and it was put to Mr Omer that he had funded the application. Mr Omer then stated that he was a discharged bankrupt. It was noted that his evidence appeared to be inconsistent and contradictory. Mr Omer was asked about the previous Director who had applied for a license in January 2009 and the inspectors were told that Mr Osman did not have a UK passport so Mr Akram was put forward instead.

1.3 It was noted by the inspectors that no one present at the inspection had read the licensing standards.

1.4 In the inspection the address given by Mr Omer and Mr Akram was 336 Hawthorne Drive Ipswich which was the same address given by the former secretary of Suffolk Recruitment, who was also refused a license. It was also noted that this was the same address given for six workers at the Capel Mushroom's farm.

2. Licensing Standard 1.2

“The GLA will consider the Principal Authority’s competence and capability to hold a GLA license in deciding whether the Principal Authority is “fit and proper”. In making this decision regard will be given to matters including, but not limited to whether the Principal Authority has an understanding of the GLA licensing standards and / or has sufficient management processes. . .”

2.1 Although the inspection was terminated and the inspectors did not proceed to looking at the details of the running of the business there was no evidence that the Principal Authority had read or understood the licensing standards.

2.2 It was noted that this was not the first time that others had been put forward in Mr Omer’s place as the Principal Authority (see above).

3. It was concluded by the inspectors that the Appellant had failed to comply with the GLA standards in that the Principal Authority was not the person who would be running the Appellant Company, it was Mr Omer. This was found to be an attempt to deceive the GLA and was considered to be intentionally obstructing the GLA. It was admitted by the accountant that it was the intention to add Mr Omer later, after the license was issued. The actions of Mr Akram was not considered to be open and honest it was taken to be done with the intention to enable Mr Omer to supply workers in a regulated sector without GLA carrying out the background checks first. This was said to amount to a breach of License Standard 1.1 attracting a critical score of 30 points.
4. The Respondent also concluded that there was a breach of standard 1.2 because Mr Akram failed to answer basic questions regarding the running of the business and he had not read the license standards and could not demonstrate an understanding of how to run a compliant business. It is made clear in the GLA license application process that the applicant or license holder of a new business will be expected to show that there are systems in place that demonstrate compliance with the requirements of the GLA, Mr Akram showed no understanding of the requirements in the answers he gave to the inspectors. A breach of standard 1.2 also attracted a critical score of 30 points.
5. It was concluded that both Mr Akram and Mr Omer were considered to be unfit to hold a GLA license.
6. It was noted that in the appeal Mr Skamballis did not challenge the factual information contained in the letter dated 22 July 2009 informing Mr Akram of the refusal of the license even though he had been offered the opportunity to appeal for a pre-appeal in respect of factual inaccuracies.

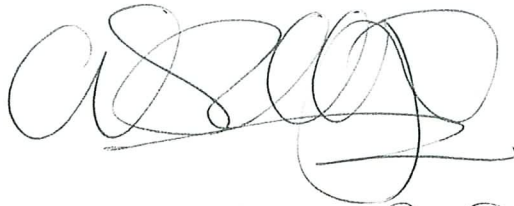
Decision

1. It was noted that the Appellant did not dispute the facts relied upon by the Respondent to refuse their application. Although the appeal submitted by Skamballis refers to a recommendation he maintained was made by the inspectors to "get a new Principal Authority", this cannot have an impact of the correctness of the decision made by the GLA on the facts before them at the time. There was sufficient information at the investigation to lead the inspectors to conclude that the Principal Authority was not the person who was to run the business, it was to be Mr Omer. It was apparent to the inspectors that Mr Akram had no idea what his role was and had not read or acquainted himself with the GLA standards, this was not disputed. On these facts the Respondent was entitled to conclude that there had been a breach of license standard 1.2.
2. It was admitted in the appeal document that it was Mr Omer who had knowledge of the business and he would assist Mr Akram. Mr Akram had been put forward as the Principal Authority because Mr Omer believed that, as a discharged bankrupt, he may not be able to be the Principal Authority. This of itself showed that all parties had been prepared to misrepresent the true state of affairs to the inspectors and to be dishonest about the true facts regarding the roles to be played by Mr Akram and Omer. On these facts the Respondent was entitled to conclude that there had been a breach of license standard 1.1. The Respondent was entitled to conclude that both were not considered to be fit and proper persons to hold a license due to their conduct at the investigation and the willingness of all parties involved in the Appellant Company to misrepresent the true state of affairs and pay little or no heed to the importance of the licensing standards. The decision to refuse a license was correct on the facts before them. There had been found to be a breach of both license standard 1.1 and 1.2, both carrying a critical score of 30 points. The Respondent was entitled to conclude that there had been a failure to comply with the license standard 1.1 and 1.2 and was therefore entitled to refuse to grant a license.
3. It was noted in the appeal that the appellants complained that the GLA should have considered the license afresh once they had received the resignation of Mr Akram and an application for Mr Omer to act as Principal Authority. Although advice may have been given in the inspection as to different ways to proceed with an application, the decision to proceed with granting (or revoking) a license is with the Head of Licensing. This appeal is against the decision of the Head of Licensing to refuse the application. The decision made by the Head of Licensing was to find both Mr Akram and Mr Omer were unfit to hold licenses on the basis of the findings of the inspection and on the facts established as to Mr Omer's previous involvement in 2008 where he was

instrumental in making applications via third party Principal Authorities. As this was not the first time Mr Omer was prepared to misrepresent his involvement in a Regulated Sector, the Respondent was entitled to conclude that he was also unfit to hold a license.

4. I am satisfied that the conclusions of the Respondent were correct with regard to Mr Omer and Mr Akram in the light of the facts of the case and the evidence before them at the time.
5. The appeal of the Appellant should therefore be struck out.

Signed

A handwritten signature in black ink, consisting of several large, overlapping loops and a long horizontal stroke at the bottom.

Dated

12 October 2009

Person appointed by the Secretary of State to determine appeals under the Gangmasters (Appeals) Regulations 2006